IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

OP.No. 390 of 2003(U)

PETITIONER:

K.R. JOSSEN, (FORMERLY ASST. ENGINEER,
CIVIL, RUBBER BOARD, KOTTAYAM)
PERMANENTLY RESIDING AT VIYYUR, THRISSUR,
NOW C/O. K.C. ANTONY, P.B.NO.185,
YANBU ALBHR, SAUDI ARABIA.

BY ADV. SRI.K.R.B.KAIMAL,
SRI.M.SREEKUMAR.

RESPONDENTS:
----

1. **THE CHAIRMAN, RUBBER BOARD,**
   KOTTAYAM.

2. **SECRETARY TO GOVT. OF INDIA,**
   MINISTRY OF COMMERCE & INDUSTRY,
   DEPARTMENT OF COMMERCE, NEW DELHI.

BY ADV. SRI.V.V.SURESH, ADDL.CGSC,
SRI.JOSEPH KODIANTHARA,
SRI.MATHEWS K.UTHUPPACHAN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 690/2003 IN O.P. NO. 390/2003

DISMISSED

31/07/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1; COPY OF THE MEMORANDUM NO. C1/8/2000-VIG. DT. 27/06/2000 TOGETHER WITH STATEMENT OF ARTICLES OF CHARGES ISSUED BY THE R.1. TO THE PETITIONER.

EXT.P.2: COPY OF THE MEMORANDUM NO. C1/8/2000-VIG. DTD. 28/06/2001 ISSUED BY THE R.1. TO THE PETITIONER.

EXT.P.2.A: COPY OF THE ENQUIRY REPORT ANNEXED TO EXT.P.2. DT. 08/06/01.

EXT.P.3: COPY OF THE REPLY DTD. 30/07/2001 SUBMITTED BY THE PETITIONER TO THE R.1.

EXT.P.4: COPY OF THE ORDER NO. C1/8/2000-VIG. DTD. 26/11/2001 ISSUED BY THE R.1.

EXT.P.5: COPY OF THE APPEAL DTD. 24/02/2002 SUBMITTED BY THE PETITIONER BEFORE THE R.2.

EXT.P.6: COPY OF THE ORDER NO. 6/6/99-PLANT (C) DTD. 03/09/2002 ISSUED BY THE R.2.

RESPONDENT'S EXHIBITS: **NIL.**

//TRUE COPY//

P.A. TO JUDGE

prv.

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.390 OF 2003

Dated this the 31st day of July, 2007

JUDGMENT

C.R.

The petitioner, employed with the Rubber Board, faced proceedings on counts of indiscipline. The charges against him related to alleged lack of appropriate supervision in relation to certain civil works, of which, he was in charge and of having been unauthorisedly absent for a particular period. These two different types of charges were answered by the petitioner showing cause to the memo issued to him. However, during the course of enquiry, the enquiry officer proceeded ex parte, allegedly for the reason that the petitioner did not utilise the opportunities extended to him before the disciplinary authority. The petitioner contended that the enquiry proceedings was conducted without extending to him appropriate opportunity of being heard and still further that he was not put to notice of the nature of the findings, by giving him a copy of the enquiry report before the disciplinary authority accepted the same. A copy of the enquiry report is stated to have given, after the disciplinary

authority had formulated its opinion regarding the imposition of punishment. May be that this is a curable situation, had the disciplinary authority considered the objections of the delinquent as regards the findings of the enquiry officer along with the delinquent's objections to the proposed punishment. Instead, the disciplinary authority imposed the punishment without answering his objections to the findings of the enquiry officer. The relevant rules provide for an appeal. The petitioner accordingly appealed to the second respondent. The elaborate contentions raised by him in Ext.P5 appeal, contains all his grievances, including the alleged irregularity and impropriety of the enquiry proceedings on quality of the findings and on the proportionality of the punishment.

2. An appeal in the eye of law is one, where the appealing person should get an opportunity of consideration of his entire case, by the appellate authority adverting to and considering the contentions raised. The rule of fair hearing includes the rule that the deciding authority has to state the reasons for rejecting an appeal by overruling the contentions raised in the appeal. A

reading of Ext.P6 appellate order, however, shows that what has been done by the appellate authority is far from what was needed to be done. The first paragraph of Ext.P6 refers to the punishment imposed, the second paragraph refers to the charges against the petitioner and in the third paragraph the appellate authority states as following:

> "The Appellate Authority having carefully considered the said Appeal Petition of Shri K.R.Jossen and other relevant documents in detail has found that the penalty imposed by the Disciplinary Authority is proportionate to the level of acts of omission and commission on the part of the petitioner. The Appellate Authority, therefore, finds no merit or justification for interfering with the orders passed by the Disciplinary Authority and rejects the Appeal Petition of Shri K.R.Jossen."

3. What has been quoted above is grossly insufficient to be called reasons for an appellate order. Even if I were to take that the same contains a semblance of application of mind, yet what is reflected thereby is only a view on the proportionality of the punishment. It does not, even in a syllable, answer the contentions in Ext.P5 appeal that the enquiry was not

appropriately conducted by affording sufficient opportunity to the delinquent and, still further, that the materials on record does not substantiate the alleged charges. The plea of the petitioner that the enquiry report was not served on him and that he was not given an opportunity of being heard before the management came to the tentative decision to impose a particular punishment is also not seen addressed and considered in Ext.P6 order. In the realm of administrative law, an order in the nature of Ext.P6 is called a 'cryptic' one, because it is a non-speaking order. In the aforesaid circumstances, Ext.P6 has to go.

In the result, the impugned Ext.P6 order is set aside and the second respondent is directed to take up Ext.P5 appeal of the petitioner, afford him an opportunity of hearing and decide on on that appeal within an outer limit of four months from the date of receipt of a copy of this judgment. All other contentions are left open.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

==========

THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.390 OF 2003

JUDGMENT

31st JULY, 2007.

==========